



The Honourable Jean-Pierre Plouffe, CD

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Re: Oversight of intelligence sharing between your government and foreign governments

Dear Sirs and Madam:

Thank you for your letter of September 13, 2017 and for the opportunity to address some very important issues that you have inquired about.

I would like to preface my answers to your questions by clarifying my role and by providing a brief overview of some recent legislative developments that have the potential to significantly alter the security and intelligence review landscape that is the subject of your letter.

My role is to provide independent, external review of Communications Security Establishment (CSE) activities to determine whether they complied with the laws of Canada, including the *National Defence Act*, the *Charter of Rights and Freedoms* and the *Privacy Act*. I provide an annual report for Parliament—which is tabled by the Minister of National Defence, who is responsible to Parliament for CSE—about the activities of my office, including unclassified summaries of my reviews of CSE activities. My annual reports and other information about my office are provided on my web site: <https://www.ocsec-bccst.gc.ca/en>.

Canada currently has a number of review bodies that examine the activities of government organizations and agencies involved in national security operations, namely the Security Intelligence Review Committee (SIRC), the CSE Commissioner, and the Civilian Review and Complaints Commission for the Royal Canadian Mounted Police (RCMP). These bodies are organization-specific and do not directly engage parliamentarians in their reviews. To address identified gaps in this structure, the Government of Canada recently passed legislation to establish a National Security and Intelligence Committee of Parliamentarians (NSICOP). The NSICOP will have a broad government-wide mandate to scrutinize any national security matter and will be empowered to perform reviews of national security and intelligence activities, including ongoing operations, and strategic and systemic reviews of the legislative, regulatory, policy, expenditure and administrative frameworks under which these activities are conducted. It will also conduct reviews of matters referred by a Cabinet minister, or discontinue a review if a minister deems its conduct to be injurious to national security. The Committee will be authorized to coordinate and collaborate with the individual review bodies within their respective mandates to minimize duplication and ensure effectiveness and efficiency in the broader review framework.

Most recently, the Government introduced a Bill (C-59) that aims to create a new review body—the National Security and Intelligence Review Agency—that would not only replace the current review bodies responsible for CSE and the Canadian Security Intelligence Service (CSIS), i.e., the CSE Commissioner and SIRC, respectively, but that would be responsible to review the security and intelligence activities of all federal Government departments and agencies. This Bill also proposes, *inter alia*, to establish an Intelligence Commissioner, who would fulfil a quasi-judicial oversight role in approving authorizations of certain CSE and CSIS activities prior to their conduct. The precise nature and modalities of the interactions among the various review and oversight bodies will depend on the form in which, and if, Bill C-59 passes into law. You may wish to consult the Bill as it currently is at first reading in Parliament.

Having provided these prefacing remarks, my answers to your questions follow. It is important to note that where your questions pertain to “your government,” I have necessarily limited my answers to CSE, as that is the scope of my mandate.

Q1: *Is the intelligence agency required to proactively inform you about intelligence sharing arrangements they are intending, or would prefer to make with other intelligence agencies or governments?*

No. The CSE Commissioner is mandated to review CSE’s operational activities to verify their compliance with the law and that appropriate measures were taken to protect privacy. The very nature of *review* in this context implies after-the-fact examination of activities that have occurred. Consequently, while I appreciate receiving pertinent information at the earliest possible time, and while my office’s review work aims to be forward-looking, and preventive in approach, in addition to retrospective, CSE has no obligation to inform the Commissioner’s office in advance of activities or arrangements that are being contemplated or planned.

However, my approach to review is proactive and purposive, whereby I examine not only CSE’s activities to verify whether they were conducted lawfully, but also CSE’s policies,

procedures and practices to identify weaknesses or gaps that could increase the risk of non-compliance, and thereby seek to mitigate risk and strengthen the agency's culture of compliance. In fact, a number of my reports have included recommendations aimed specifically at taking preventive measures to help reduce the risk of non-compliance and to enhance privacy protection.

Q2: *Do you have the power to access in full all relevant information about the intelligence sharing activities of your government?*

As set out in the *National Defence Act*, I have all the powers of a Commissioner under Part II of the *Inquiries Act*, including the power of subpoena, which gives me and my staff unfettered access to all CSE facilities, documents and personnel. As such, I can access all relevant information about the intelligence sharing activities of CSE.

Q3: *Do you have sufficient power and resources to review decisions to share intelligence and/or undertake independent investigations concerning the intelligence sharing activities of your government, including with respect to the substantive scope and proportionality of such sharing?*

I have sufficient resources to monitor and review CSE's intelligence-sharing decisions, arrangements and activities, and to undertake any investigations in relation to such sharing and to satisfy any concerns I may have. My office has conducted reviews specifically of CSE's information sharing with foreign entities and I continue to monitor these and related activities.

Q4. *Do you cooperate with any other oversight bodies, domestic or foreign, to oversee the intelligence sharing activities of your government? Are you able to share sufficient information with these other oversight bodies to provide adequate oversight and review?*

I have no explicit authority to collaborate with other review or oversight bodies. However, in the domestic realm, when reviewing CSE activities that involve another Government of Canada security and intelligence (S&I) or law enforcement agency, such as CSIS or the RCMP, I have taken the same approach as my predecessors in sharing pertinent information with the review body of the respective agency. As an example, within a five-year period my immediate predecessor and I have sent ten letters to the Chair of SIRC with information related to CSIS, for SIRC to follow up on as it deems appropriate.

In the international realm, I have participated in meaningful discussions with other review and oversight bodies within the "Five Eyes" community on a number of issues, including the sharing of information by intelligence agencies and the protection of privacy. These discussions have yielded a proposal to establish a forum through which review and oversight bodies of Five Eyes S&I organizations can discuss issues of mutual relevance and share best practices. This, in turn, should lead to an enhanced mutual awareness of key issues and challenges, such as privacy protection, and to more informed and consistent approaches being

taken across the Five Eyes S&I review community. This forum would also explore possible areas of cooperation on reviews and sharing of results, where and as appropriate.

Q5. *What, if anything, do you see as the primary current impediment to your capacity to substantively review intelligence-sharing activities of the agencies you oversee?*

I have not identified any impediment to my substantively reviewing the intelligence sharing activities of CSE; however, as noted immediately above, formal authority to cooperate and share review-specific operational information with other review bodies would strengthen review capacity and effectiveness. Should Bill C-59 pass, the creation of a single agency to review national security activities across Government departments and agencies should resolve this issue.

Q6. *To what extent is the Minister of National Defence involved in the negotiation, approval or internalization of intelligence-sharing agreements with foreign agencies or governments?*

This is a question that the Minister's office would be best situated to answer.

I trust my answers are clear and comprehensive. Please do not hesitate to contact me or my office if you have any further questions.

Sincerely,



The Honourable Jean-Pierre Plouffe, CD

c.c. The Honourable Pierre Blais, PC
Chairperson, SIRC